

NOMOSSTUDIUM

Prof. Claudina Richards
University of East Anglia

Dr. Viviana Mollica
University of East Anglia

English Law and Terminology

5th Edition



Nomos

Table of Contents

Chapter 1: Characteristics of Legal Language	15
Chapter 2: The Common Law	17
I. Introduction	17
II. The Historical Development of the Common Law	17
1. The Time Before The Norman Conquest	17
2. The Time Following the Norman Conquest	18
3. The Common Law Courts	19
III. Is Common Law Judge-Made Law?	20
IV. The Spread of the Common Law	21
V. Terminology	22
VI. Review and Discussion	23
Chapter 3: Sources of Law	25
I. Minor Sources of Law	25
1. Custom	25
2. Law Merchant	26
3. Canon Law	26
4. Books of Authority	26
II. Major Sources of Law	27
1. Legislation	27
a) Statute Law	27
b) Delegated Legislation	27
c) Statutory Interpretation	28
2. Case Law	29
a) The Rule of Stare Decisis	29
b) Ratio Decidendi and Obiter Dicta	29
c) Distinguishing and Overruling	30
III. Law of the European Union	30
IV. Terminology	30
V. Review and Discussion	32
Chapter 4: The Court System	36
I. Introduction	36
II. The Courts	36
1. Magistrates' Courts	36
2. County Court	37
3. Family Court	37
4. Crown Court	37
5. High Court of Justice	38
a) The King's Bench Division	38
b) The Chancery Division	38
c) The Family Division	39

Table of Contents

6. Court of Appeal	39
a) The Civil Division	39
b) The Criminal Division	39
7. The Supreme Court and the House of Lords	40
8. Privy Council	40
III. Simplified Diagram of the Current Court Structure	41
IV. Terminology	42
V. Review and Discussion	43
Chapter 5: Trial System	46
I. The Adversarial System	46
II. The Jury	46
1. Origins of the Jury System	46
2. Composition of the Jury	47
3. Challenging of Jurors and Jury Vetting	47
4. Use of the Jury	48
5. The Role of the Jury	49
III. Terminology	50
IV. Review and Discussion	50
Chapter 6: Legal Personnel	52
I. Judges	52
1. Appointment	52
2. Tenure	53
3. Judicial Independence	53
II. Legal Professions	54
1. Solicitors	54
a) Education and Training	54
b) Work	54
c) The Solicitors Regulation Authority and the Law Society	55
2. Barristers	55
a) Education and Training	55
b) Work	55
c) The Bar Standards Board and the Bar Council	56
III. Law Officers	56
IV. Crown Prosecution Service	56
V. Terminology	57
VI. Review and Discussion	58
Chapter 7: Pre-trial Civil Procedure	61
I. Introduction	61
II. Case Management	61
III. Management Tracks	61
1. Introduction	61

Table of Contents

2. Small Claims Track	62
3. Fast Track	62
4. Multi-Track	62
IV. Initiating Proceedings	63
1. Initiating a Claim	63
2. Responding to a Claim	63
3. Statement of Truth	64
V. Disclosure	64
VI. Evidence	65
VII. Judgment Without Trial	65
1. Default Judgment	65
2. Summary Judgment	66
VIII. Legal Aid	66
IX. Terminology	66
X. Review and Discussion	67
Chapter 8: Constitutional Law	69
I. Nature of the Constitution	69
1. The Unwritten Constitution	69
2. Constitutional Conventions	69
II. Important Constitutional Principles	69
1. The Rule of Law	69
2. Parliamentary Sovereignty	70
3. The Doctrine of Separation of Powers	71
III. Parliament	72
1. Introduction	72
2. The House of Commons	72
3. The House of Lords	73
4. Government	74
5. The Legislative Process	75
IV. Devolution	76
V. Terminology	76
VI. Review and Discussion	78
Chapter 9: Equity and Trusts	81
I. Historical Development of Equity	81
1. Development of the Court of Chancery	81
2. The Fusion of Law and Equity	82
II. Maxims of Equity	82
1. Nature of Equitable Maxims	82
2. Examples of Equitable Maxims	82
III. Equitable Remedies	83
1. Introduction	83
2. Specific Performance	83

Table of Contents

3. Injunctions	83
a) Prohibitory and Mandatory Injunctions	84
b) Final and Interim Injunctions	84
c) Without Notice Injunctions	84
d) Freezing Injunctions and Search Orders	84
4. Rescission	85
5. Rectification	85
IV. Trusts	85
1. Historical Development of the Trust	85
2. Definition of the Trust	86
3. The Private Express Trust	86
4. Purpose Trusts	87
5. Charitable Trusts	87
6. Constructive and Resulting Trusts	87
7. Fiduciary Duties	88
8. Tracing	88
V. Terminology	88
VI. Review and Discussion	89
Chapter 10: Contract Law	91
I. Introduction	91
II. Formation of a Contract	91
1. Freedom of Contract	91
2. Offer and Acceptance	92
3. Consideration	92
4. Intention to Create Legal Relations	93
5. Form	93
III. Contents of the Contract	94
1. Express and Implied Terms	94
2. Conditions, Warranties and Innominate Terms	94
3. Standard Form Contracts	95
IV. Contracts and Third Parties	95
1. Privity of Contract and the Contract (Rights of Third Parties) Act 1999	95
2. Agency	95
V. Void and Voidable Contracts	95
1. Meaning of 'Void' and 'Voidable'	95
2. Capacity	96
3. Illegality	96
4. Mistake	97
5. Misrepresentation	97
6. Duress and Undue Influence	97
a) Duress	98
b) Undue Influence	98
VI. End of the Contract	98
1. Performance	98

Table of Contents

2. Breach	98
3. Frustration	99
VII. Remedies	99
1. Damages	99
2. Specific Performance	99
3. Restitution	99
VIII. Terminology	99
IX. Review and Discussion	101
 Chapter 11: The Law of Tort	 103
I. Introduction	103
II. Fundamental Principles of Tortious Liability	103
1. Introduction	103
2. Causation	103
3. Remoteness	104
4. Contributory Negligence	104
III. Main Torts	104
1. Defamation	104
2. Nuisance	105
a) Private Nuisance	105
b) Public Nuisance	105
3. Trespass	106
4. Strict Liability: The Rule in Rylands v Fletcher	106
5. Negligence	107
IV. Remedies	108
1. Introduction	108
2. Damages	109
V. Defences	109
1. Introduction	109
2. General Defences	109
3. Special Defences	110
VI. Terminology	110
VII. Review and Discussion	111
 Chapter 12: Commercial Law	 114
I. Commercial Law	114
II. Introduction to Sale of Goods Law	114
1. Definition of Contract of Sale	114
2. Subject-Matter of the Contract	115
a) Definition of 'Goods'	115
b) Classification of Goods	116
III. Duties of the Seller	116
1. Duty to Pass Good Title	116
2. Duty to Deliver	117
3. Duty to Deliver Goods at the Right Time	117

Table of Contents

4. Duty to Supply the Right Quantity of Goods	118
5. Duty to Supply Goods of the "Right" Quality	118
IV. Duties of the Buyer	118
1. Duty to Pay the Price	118
2. Duty to Take Delivery and Accept the Goods	119
V. Effects of the Contract	120
1. Transfer of Property	120
2. Passing of Risk	120
VI. Remedies	120
1. Remedies of the Seller	120
2. Remedies of the Buyer	121
VII. Terminology	122
VIII. Review and Discussion	123
Chapter 13: Company Law	126
I. Introduction	126
II. Birth of a Company	126
1. Nature of Registered Companies	126
2. Classification of Companies	126
3. Formalities and Documentation	127
III. People Involved	127
1. Promoters	127
2. Directors	128
3. Secretary	128
IV. Membership	128
V. Shares	129
1. Introduction	129
2. Types of Shares	129
VI. Capital	130
VII. General Meetings	130
VIII. Shareholder Remedies	131
IX. Winding-up	131
X. Terminology	132
XI. Review and Discussion	133
Chapter 14: European Union Law	135
I. Background	135
II. The Institutions of the EU	135
1. The Commission	135
2. The Council	136
3. The European Council	136
4. The European Parliament	136
5. The Court of Justice of the European Union (CJEU)	137
6. The European Central Bank (ECB)	138

Table of Contents

7. The Court of Auditors	138
III. Sources of EU Law	138
1. Primary sources	138
2. Secondary sources	138
IV. The Legislative Process	139
1. The Ordinary Legislative Procedure	139
2. The Special Legislative Procedures	140
V. The Relationship between EU Law and the Law of the Member States	140
1. Introduction	140
2. Direct Effect	140
3. State Liability	141
4. Supremacy	141
5. Preliminary References	141
VI. Substantive EU law	142
1. Free Movement of Goods	142
2. Free Movement of Workers	142
3. Freedom of Establishment and Free Movement of Services	142
4. Free Movement of Capital	143
VII. The EU and the UK	143
VIII. Terminology	144
IX. Review and Discussion	146
Chapter 15: Other Areas of Law	148
I. Classifications of Law	148
II. Other Areas of Law	148
III. Terminology	150
Index	153